

PATENT
20020/10012

IFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:

FISCHBACH, et al.

Serial No.: 10/728,403

For: METHODS AND
APPARATUS TO LOCK A
DUST COVER IN A FIREARM
HOUSING

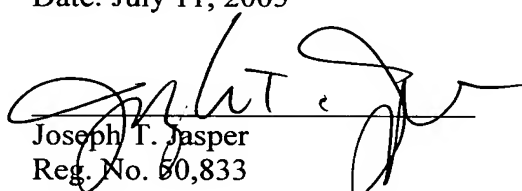
Filed: December 5, 2003

Group Art Unit: 3641

Examiner: L. Semunegus

) I hereby certify that this paper is
) being deposited with the United
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) Commissioner for Patents, P.O.
) Box 1450, Alexandria, VA 22313-
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) Date: July 11, 2005

) 
) Joseph T. Jasper
) Reg. No. 50,833

**SUPPLEMENTAL RESPONSE TO THE OFFICE ACTION DATED
DECEMBER 2, 2004**

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

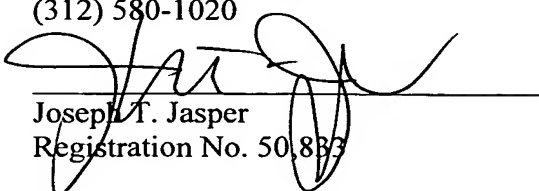
Sir:

Further to the amendment filed on June 2, 2005, enclosed is a Rule 132

Declaration by Franz Beer. The Rule 132 declaration provides further
evidentiary support for the arguments presented in the June 2, 2005
submission.

Respectfully submitted,
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By:


Joseph T. Jasper
Registration No. 50,833

July 11, 2005



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machine carbine 42 (the "Sturmgewehr"), which has been known since 1941, employed such a dust cover.

3. Further, these types of dust covers, including the dust cover employed in the Sturmgewehr, opened in response to movement of the breech. Persons of ordinary skill in the art have, thus, known and understood this common mechanism by which a moving breech forced a dust cover to the open position to facilitate discharge of a spent cartridge casing for more than 50 years. Such mechanisms are, thus, common knowledge to persons of ordinary skill in the art.

4. I am advised that the USPTO has taken the position that it would be obvious to a person of ordinary skill in the art to utilize a magnetic lock to secure a dust cover of a firearm in a closed position in view of the teachings of Murello, U.S. Patent 6,523,293, Swink, U.S. Patent 4,753,495, and/or Su, U.S. Patent 6,550,298. I have reviewed the Murello, Swink and Su patents, and as a person of ordinary skill in the art, I do not agree that, absent reference to the teachings of the patent application at issue, the Murello, Swink and Su patents, whether taken alone or in combination, would teach or suggest the inclusion of a magnetic lock in a firearm to a person of ordinary skill in the art.

5. My belief is based on several factors. First, as noted above, dust covers of the type at issue have been known since at least 1941. Magnetic locks in appliances such as the Swink disclosure have been known for at least a similar length of time. However, despite the availability of this knowledge

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for over 50 years, no person has combined these features to utilize a magnetic lock in a firearm.

6. One reason for this failure is the fact that the furniture/cabinetry arts are not analogous to the firearm arts. A person of ordinary skill in the art would never look to the furniture/cabinetry arts for teachings on how to construct a firearm.

7. Another reason for this failure is that magnetic locks must be manufactured within relatively tight tolerances. If the magnetic lock components are not properly aligned, the magnetic force will be insufficient for holding the dust cover shut. Thus, the holding force of the magnetic lock must be large to ensure that, even in the case of misalignment, the lock will function. As a result, the breech must apply a significant force to overcome the magnetic lock and open the dust cover. The requirement of such a force raises the possibility of a breech jam, particularly in the case of lower caliber weapons.

8. In view of the above issues, when I spoke to a small arm specialist, Mr. Hujer, Sauerlach, am Grafinger Steig 2, about the magnetic lock for the dust cover. Mr. Hujer replied "It will not work." Mr. Hujer is educated as a mechanic, but built up an enormous knowledge concerning small arms. He worked as a consultant for gun firms but he is now retired. He is, thus, a person of at least ordinary skill in the art.

9. I understand that willful false statements and the like are punishable by fine and/or imprisonment, or both, under Section 1001, Title 18 of the United States Code, and that any

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such willful false statement may jeopardize the validity of
this application and any patent resulting therefrom.

Date: 28. 06. 05

By:



Franz Beer